

# EXHIBIT D

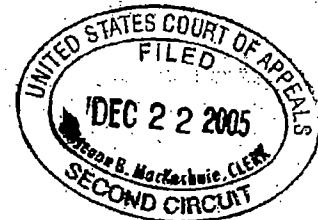
S.D.N.Y.  
03-cv-5194  
Scheidlin, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse at Foley Square, in the City of New York, on the 22<sup>nd</sup> day of December two thousand five,

Present:

Hon. Dennis Jacobs,  
Hon. Chester Straub,  
Hon. Rosemary S. Pooler,  
*Circuit Judges.*



Lawrence Fogarazzo, et al.,  
Plaintiffs-Respondents,

v.

05-8021-mv

Lehman Brothers, Inc., et al.,  
Defendants-Petitioners.

Petitioners, through counsel, move this Court for leave to appeal the district court's order granting class certification pursuant to Fed. R. Civ. P 23(f). Upon due consideration, it is ORDERED that the Petitioners' motion is held in abeyance pending the disposition of Miles v. Merrill Lynch & Co., No. 04-8026 (2d Cir. June 30, 2005) (order granting Rule 23(f) leave to appeal), and the motion will be considered and decided by the motions panel of this Court sitting on Tuesday, February 28, 2005. Likewise, the appeal in Miles will be heard (on the day calendar) by the same panel on February 28, 2005. It is further ORDERED that Petitioners' motion is denied as to whether the district court erroneously applied the Affiliated Ute presumption, derived from Affiliated Ute Citizens v. United States, 406 U.S. 128, 151 (1972), to a claim regarding both omissions and misstatements.

FOR THE COURT:  
Roseann B. MacKechnie, Clerk

By: Richard Alcantara  
Richard Alcantara, Deputy Clerk

SAO-RZ